

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
5:10-CV-583

Aaron Buckner, Allison Butler, Jack Clifford
Elliot, Chad Goudy, Joshua O'Dell, and Amy
Rullis,

Plaintiffs,

vs.

North Carolina Culinary Ventures, LLC d/b/a/
An New World Cuisine Restaurant and Michael
Chuong

Defendants.

**NOTICE OF REMOVAL OF CIVIL
ACTION UNDER 28 U.S.C. §§ 1441 AND
1446
(Federal Question Jurisdiction)**

Wake County Superior Court
File No. 10 CVS 19746

Defendants North Carolina Culinary Ventures, LLC d/b/a/ An New World Cuisine Restaurant and Michael Chuong ("Defendants") hereby remove this civil action to the United States District Court for the Eastern District of North Carolina, pursuant to 28 U.S.C. §§ 1441 and 1446. In support of this removal, Defendants state the following:

1. On 23 November 2010, Plaintiffs Aaron Buckner, Allison Butler, Jack Clifford Elliot, Chad Goudy, Joshua O'Dell, and Amy Rullis ("Plaintiffs") commenced this action against Defendants in the General Court of Justice, Superior Court Division, for Wake County, North Carolina by filing a Complaint (State Court File No. 10 CVS 19746).

2. On 24 November 2010, Plaintiffs served Defendants with copies of the Summons and Complaint. Pursuant to 28 U.S.C. § 1446(a), a copy of the Summons and Complaint that was served on Defendants is attached as Exhibit A. No other process, pleadings, or orders have been served upon Defendants in this proceeding.

3. Defendants file this Notice of Removal pursuant to 28 U.S.C. § 1446. This notice of removal is being filed with the Court within 30 days of Defendants' receipt of a copy of the Plaintiffs' Complaint, as required by 28 U.S.C. §1446(b). The time for removing this action to federal court has not expired.

4. Pursuant to 28 U.S.C. § 1446(d), a true and correct copy of this Notice will be filed with the Clerk of Superior Court, Wake County, North Carolina, promptly after the filing of this Notice, and written notice will be served on counsel for the adverse party. A copy of the Notice to State Court of Removal (without attachments) is attached as Exhibit B, and a copy of the Notice of Removal to Adverse Party (without attachments) is attached as Exhibit C.

JURISDICTION

5. This Court has original jurisdiction over this civil action pursuant to 28 U.S.C. § 1331 because one of Plaintiffs' causes of action arises under the Fair Labor Standards Act of 1938 ("FLSA") (29 U.S.C. §§ 201-219).

FEDERAL QUESTION JURISDICTION

6. A district court has original jurisdiction over cases arising under federal law pursuant to 28 U.S.C. § 1331.

7. Cases alleging violations of the FLSA arise under federal law and may be maintained in any federal court of competent jurisdiction. See Breuer v. Jim's Concrete of Brevard, Inc., 538 U.S. 691 (2003).

8. In their Complaint, Plaintiffs assert violations of the FLSA based on Defendants' alleged failure to pay them all wages and tips accruing to them on their regular pay days.

9. Plaintiffs also allege claims for violations of the North Carolina Wage and Hour Act, negligent misrepresentation, intentional infliction of emotional distress, negligent retention, negligent supervision, and breach of contract.

10. Pursuant to 28 U.S.C. § 1441(c), whenever a separate and independent claim or cause of action within the jurisdiction conferred by 28 U.S.C. § 1331 is joined with an otherwise nonremovable cause of action, such as the causes of action for violations of the North Carolina Wage and Hour Act, negligent misrepresentation, intentional infliction of emotional distress, negligent retention, negligent supervision, and breach of contract in this case, the entire case may be removed.

11. This entire action is removable to this Court, therefore, pursuant to 28 U.S.C. § 1441.

VENUE

12. Removal to the United States District Court for the Eastern District of North Carolina, is proper under 28 U.S.C. § 1441(a) because the Complaint was filed in Wake County, North Carolina.

WHEREFORE, Defendants request that the above-described action now pending against them in the General Court of Justice, Civil Superior Court Division, for Wake County, North Carolina be removed to the United States District Court for the Eastern District of North Carolina.

This the 22nd day of December 2010.

POYNER SPRUILL LLP

By: /s/ Kevin M. Ceglowski
Susanna Knutson Gibbons
N.C. State Bar No. 9815
Kevin M. Ceglowski
N.C. State Bar No. 35703

301 Fayetteville Street, Suite 1900
Raleigh, NC 27601
Telephone: (919) 783-6400
Facsimile: (919) 783-1075
Email: sgibbons@poynerspruill.com
Email: kceglowski@poynerspruill.com

ATTORNEYS FOR DEFENDANTS
NORTH CAROLINA CULINARY
VENTURES, LLC D/B/A/ AN NEW
WORLD CUISINE RESTAURANT
AND MICHAEL CHUONG

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing *Notice of Removal* by depositing a copy thereof in an envelope bearing sufficient postage in the United States mail, addressed to the following person(s) at the following address which is the last address known to me:

Laura Noble
Nicolas J. Sanservino, Jr.
The Noble Law Firm
115 East Main Street
Durham, NC 27701

Attorneys for Plaintiffs

This the 22nd day of December 2010.

POYNER SPRUILL LLP

By: /s/ Kevin M. Ceglowski
Susanna Knutson Gibbons
N.C. State Bar No. 9815
Kevin M. Ceglowski
N.C. State Bar No. 35703
301 Fayetteville Street, Suite 1900
Raleigh, NC 27601
Telephone: (919) 783-6400
Facsimile: (919) 783-1075
Email: sgibbons@poynerspruill.com
Email: kceglowski@poynerspruill.com

ATTORNEYS FOR DEFENDANTS
NORTH CAROLINA CULINARY
VENTURES, LLC D/B/A/ AN NEW
WORLD CUISINE RESTAURANT
AND MICHAEL CHUONG